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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-094]

Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Affirmative Determination, in Part, of Critical Circumstances in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.]

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-1395.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 2019, the Department of Commerce (Commerce) published the preliminary determination in the countervailing duty (CVD) investigation of imports of refillable stainless steel kegs (kegs) from the People's Republic of China.¹ On May 2, 2019, the American Keg Company LLC (petitioner) alleged that critical circumstances exist with respect to imports of kegs from China, pursuant to sections 703(e) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206.²

¹ See *Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 13634 (April 5, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

² See Letter from the petitioner, "Refillable Stainless Steel Kegs from the People's Republic of China: Petitioner's Critical Circumstances Allegation," dated May 2, 2019.

In accordance with 19 CFR 351.206(c)(2)(ii), if the petitioner submits an allegation of critical circumstances later than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist within 30 days of the petitioner's allegation.

Section 703(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will preliminarily determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect that: (A) "the alleged countervailable subsidy" is inconsistent with the Subsidies and Countervailing Measures (SCM) Agreement of the World Trade Organization; and (B) there have been massive imports of the subject merchandise over a relatively short period. Sections 351.206(h)(2) and (i) of Commerce's regulations provide that imports must increase by at least 15 percent during the "relatively short period" to be considered "massive" and defines a "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.

Critical Circumstances Analysis

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, Commerce considered the evidence on the record of this CVD investigation. Specifically, as reflected in the *Preliminary Determination*, Commerce found that Ningbo Master International Trade Co., Ltd. (Ningbo Master), the one participating mandatory respondent in this investigation, benefitted from the

following export-contingent subsidies: International Market Expansion Fund and Export Assistance Grants.³

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 703(e)(1)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”).⁴ Imports will normally be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.⁵

Accordingly, to determine preliminarily whether there has been a massive surge in imports for Ningbo Master International Trade Co., Ltd. (Ningbo Master), the mandatory respondent in this investigation, which provided shipment data, Commerce compared the total volume of shipments from October 2018 through April 2019, the comparison period (*i.e.*, all months for which shipment data was available), with the preceding seven-month period of March 2018 through September 2018, the base period. After analyzing the data submitted, we preliminarily determine imports from Ningbo Master were not massive (*i.e.*, did not increase by

³ See *e.g.*, Memorandum to the File, “Countervailing Duty Investigation of Refillable Stainless Steel Kegs from the People’s Republic of China: Preliminary Determination Calculations for Ningbo Master International Trade Co., Ltd.,” dated March 29, 2019.

⁴ See *Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Preliminary Determinations of Critical Circumstances*, 82 FR 19219 (April 27, 2017) at 19220, unchanged in *Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 82 FR 51806 (November 8, 2017) at 51807-08.

⁵ *Id.*

more than 15 percent between the base and comparison periods) over a relatively short period of time within the context of 19 CFR 351.206(h).⁶

As detailed in the *Preliminary Determination*, Commerce applied an Adverse Facts Available (AFA) rate for certain companies that did not act to the best of their ability to respond to Commerce's requests for information.⁷ Therefore, we preliminarily determine, on the basis of AFA,⁸ that there has been a massive surge in imports for these 19 companies that chose not to participate in this investigation. Further, in the *Preliminary Determination*, we preliminarily determined that all 19 companies benefited from export-contingent countervailable subsidies, including the "International Market Expansion Fund" and "Export Assistance Grants" programs.⁹ Therefore, we preliminarily find that these companies received countervailable subsidies that are inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act. As such, we preliminarily determine that critical circumstances exist with respect to these AFA companies only.

To determine whether imports were massive for all other producers/exporters, Commerce's normal practice is to subtract shipments reported by the cooperating mandatory

⁶ See Memorandum to the File, "Countervailing Duty Investigation of Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Determination of Critical Circumstances" dated concurrently with this notice.

⁷ See PDM at pages 14-17. Specifically, one mandatory respondent, Penglai JinFu Stainless Steel Products Co., Ltd., failed to respond to Commerce's questionnaire, and the following 18 companies failed to respond to Commerce's Quantity and Value Questionnaire: Equipmentines (Dalian) E-Commerce Co., Ltd.; Jinan HaoLu Machinery Equipment Co., Ltd.; NDL Keg Qingdao Inc.; Ningbo Direct Import & Export Co., Ltd.; Ningbo Hefeng Container Manufacture Co., Ltd.; Ningbo Hefeng Kitchen Utensils Manufacture Co., Ltd.; Ningbo HGM Food Machinery Co., Ltd.; Ningbo Jiangbei Bei Fu Industry and Trade Co., Ltd.; Ningbo Sanfino Import & Export Co., Ltd.; Ningbo Shimaotong International Co., Ltd.; Ningbo Sunburst International Trading Co., Ltd.; Orient Equipment (Taizhou) Co., Ltd.; Qingdao Henka Precision Technology Co., Ltd.; Shandong Tiantai Beer Equipment; Sino Dragon Trading International; Wenzhou Deli Machinery Equipment Co.; Wuxi Taihu Lamps and Lanterns Co., Ltd.; and Yantai Trano New Material Co., Ltd.

⁸ See section 776 of the Act.

⁹ See PDM at pages 15-17 and Appendix.

respondents from shipment data of subject merchandise compiled by the ITC.¹⁰ However, as discussed in the *Initiation Notice*¹¹ for this investigation, the Harmonized Tariff Schedule of the United States (HTSUS) numbers under which the subject merchandise would enter are basket categories containing a wide variety of manufactured steel products unrelated to kegs.

Therefore, consistent with prior practice, we have preliminarily relied upon the participating respondent company's data as "facts available" in accordance with section 776(a)(1) of the Act to determine whether imports from all other producers/exporters were massive.¹² Based on the import data submitted by Ningbo Master, we have preliminarily determined that imports from all other producers/exporters likewise were not massive.

Final Critical Circumstances Determination

We will issue our final determinations concerning critical circumstances when we issue our final CVD determination. All interested parties will have the opportunity to address this determination. Case briefs, addressing critical circumstances only, may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the publication date of this notice. Rebuttal briefs, limited to issues raised in these critical circumstances-only case briefs, may be submitted no later than five days after the deadline date for case briefs.¹³ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs for this critical circumstances finding are encouraged to submit with each

¹⁰ See, e.g., *Antidumping Duty Investigation on Refillable Stainless Steel Kegs from Mexico: Preliminary Affirmative Determination of Critical Circumstances*, 84 FR 18796 (May 2, 2019) at 18798 (*Kegs from Mexico Preliminary Critical Circumstances Determination*).

¹¹ See Memorandum to the File, "Countervailing Duty Investigation Initiation Checklist: Refillable Stainless Steel Kegs from the People's Republic of China," dated October 10, 2018 (Initiation Checklist); see also *Refillable Stainless Steel Kegs from the Peoples Republic of China: Initiation of Countervailing Duty Investigation*, 83 FR 52192 (October 16, 2018) (*Initiation Notice*).

¹² See, e.g., *Kegs from Mexico Preliminary Critical Circumstances Determination*, 84 FR at 18798.

¹³ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of this preliminary determination of critical circumstances.

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, for the 19 companies that chose not to participate in this investigation, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of any unliquidated entries of subject merchandise from China entered, or withdrawn from warehouse for consumption, on or after January 5, 2019, which is 90 days prior to the date of publication of the *Preliminary Determination* in the Federal Register. For such entries, CBP shall require a cash deposit equal to the estimated preliminary subsidy rates established for these companies in the *Preliminary Determination*. This suspension of liquidation will remain in effect until further notice.

This determination is issued and published pursuant to section 777(i) of the Act.

Dated: May 28, 2019.

Christian Marsh,
Deputy Assistant Secretary
for Enforcement and Compliance.
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